(3)

No. 01-1254

Supreme Court, U.S.
FILED
APR 1 2002

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL, & COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

SUPPLEMENTARY BRIEF

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Petitioner – In Pro -Per

12pp

QUESTION PRESENTED

Revised Question 9)

Does a District Court generated vexatious litigant order with a 500$ per filing fee under USDC Central District Of California Local Rule 27 (a) violate equal protection of the laws and due process clause of the Fourteenth Amendment and infringe on a pro per litigant's right of access into the district court now, see *Bounds v. Smith*, 430 U.S. 817, 52 L. Ed. 2d 72, 97 S. Ct. 1491 (1977), *Wolff v. McDonnell*, 418 U.S., at 579, when the district court did not inform the pro per litigant in Plain English of the specific conduct appearing to violate subdivision FRCP 11 (b) pursuant to FRCP 11 c (1) (B) prior to entering the vexatious litigant order and cancelling the hearing -

In circumstances where two Civil Rights lawsuits were filed in half a century, and if part of the district court's justification for the vexatious litigant order (affirmed by 9th Circuit in an unpublished opinion on June 25th 2001), were overuled in *Bernhardt v County Of Los Angeles* et al 279 F.3d 862 (9th Circuit 4th Feb 2002) as the related case itself, and the earlier motion to supplement it to this case were part of the district court's justifications for the vexatious litigant order (Appendix B App 5) , and if the vexatious litigant order is not narrowly tailored because it doesn't fit the district court's specific vices encountered See the criteria of. *De Long v Hennessey* 912 F. 2d 1144, 1146-48 (9th Circuit 1990))

QUESTION PRESENTED

15) If the district court denied the petitioner's motion to supplement this case with a cause of action for equitable relief against the County Of Los Angeles Settlement policy on 1st July 1999 without reason when the petitioner in pro -per had standing to bring the case at the time - and if this denial prejudiced this case and the subsequently filed related case, as the 9th Circuit reversed and remanded the separate action *Bernhardt v County Of Los Angeles* et al 279 F.3d 862 on 4th Feb 2002 but held that prospective relief was moot, and if this petition for writ of certiorari was filed in this court two days before the 9th Circuit's 4th February 2002 decision regarding mootness, and so a live case or controversy for injunctive relief did exist at the time of the 9th Circuit decision, See *Burke v. Barnes*, 479 U.S. 361, 363, 93 L. Ed. 2d 732, 107 S. Ct. 734 (1987), and if "the capable of repetition, yet evading review" exception to mootness also applies, See *Spencer v. Kemna*, 523 U.S. 1, 17, 140 L. Ed. 2d 43, 118 S. Ct. 978 (1998) , then whether the district court order Number 36 which denied supplementation of this case with the related case should be reversed?

PARTIES TO PROCEEDING

The Petitioner is Angela Bernhardt.

The Santa Monica College et al Respondents are - Santa Monica Community College District, Santa Monica College, Santa Monica College Police Department, Santa Monica College Board Of Trustees, , R. L. Jones, Ron Marable, O.D. Obiamiwe, Eileen Miller, Brenda Simmons, Piedad Robertson, Jo Ann Fielder, Robert Sammis, Herbert Roney, Dorothy Ehrhart - Morrison, Nancy Cattell-Luckenbach, Carole L. Curry, Patrick Nichelson, Annette Shamey.

The County Of Los Angeles et al respondents are - County Of Los Angeles, Los Angeles County Sheriff Department, Laurence D Rubin, 1-10 Caucasian Male Sheriff Deputy Does Of Judge Laurence D Rubin's Courtroom R & County Of Los Angeles Sheriff Department, Sherman Moten, Terry January, Leroy Baca, County Of Los Angeles Santa Monica Municipal Court. Does 1-100.

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SUPPLEMENTARY BRIEF

This supplementary brief, (a.k.a supplemental brief) pursuant to Supreme Court Rule 15 - (8) – calls attention to *Bernhardt v. County Of Los Angeles et al*, 279 F.3d 862 (9th Circ 4th Feb. 2002) (USDC Central District Of California Case No. CV-99-10121-JSL (Mc))- 9th Circuit Case No. 00-55524), which was reversed & remanded on February 4th 2002, two days after this Petition for Writ of Certiorari 01-1254 was filed on 2nd February 2002. The 9th Circuit reversal has changed the status, and made it necessary to revise Question Presented Number 9 (Page i), and the argument for it following, from the Petition For Writ of Certiorari and Question 15 has also been added (Page ii), on account of the change in status of the related case.

JUDICIAL NOTICE

Petitioner requests that the court take Judicial Notice of the following which are relevant to Revised Question Presented 9.

1. *Bernhardt v. County Of Los Angeles et al*, 279 F.3d 862 (published 9th Circ 4th Feb. 2002).
2. *Bernhardt v Santa Monica College et a*l, (unpublished 9th Circuit June 25th 2001) (in Petition For Writ Of Certiorari at Appendix A - App 1 through 4)
3. The true meaning of the term "vexatious litigant".
4. The district court's vexatious litigant orders (In the Petition For Writ Of Certiorari - Appendix B -App 5 through 7) & in the record as District Docket 92, 93.
5. The order to show cause why plaintiff should not be declared a vexatious litigant pursuant to Fed.R. Civ. P. 11 & Local Rule 27A entered March 24th 2000 - (At Appendix B - App 8 and App 9) & in the record as District Court Docket 83.

JUDICIAL NOTICE

Petitioner requests that the court take Judicial Notice Of the following which are relevant to Question Presented 1 through 8, and Question Presented 14. See *Mir, M.D., v. Little Company of Mary Hospital*, 844 F.2d 646; 649 (9th Circuit 1988) "In addition to the complaint, it is proper for the district court to "take judicial notice of matters of public record outside the pleadings" and consider them for purposes of the motion to dismiss."

6a. The Small Claim from County Of Los Angeles Municipal Court, No SM 98 A01 437 filed on 2nd Sept 1998

6b. The Small Claims default judgment filed on Oct 6th 1998 at Santa Monica Judicial District (19484) Address 1725, Main Street Santa Monica California 90401 (In Petition For Writ Of Certiorari at Appendix C App 40 through 45, and at district court docket 1 attached to the original complaint)

Petitioner requests that the court take Judicial Notice Of the following which are relevant to Questions Presented 12, 13, and 14 and all questions.

7. The Christopher Commission Report (Report) which identified the "code of silence" Report of the Independent Commission on the Los Angeles Police Department 168 (1991) (the Christopher Commission Report).

JUDICIAL NOTICE

Petitioner requests that the court take Judicial Notice Of the following relevant to Questions Presented Question Presented No 14 of this case No 01-1254.

8. The Supreme court's briefs, amicus briefs and the Supreme Court 9th January 2002 transcript in the case of *National Railroad v Morgan* No 00-1614, which is pending in this court, concerning continuing violation doctrine in discrimination cases.

9. Petitioner's continuing violation sexual assault-discrimination, retaliation, hostile environment complaint under Title IX in the 1st Amended Complaint, (Petition For Writ Of Certiorari Volume II (Continuation Of Appendix) Page 2 through 98.

ARGUMENT 9

BACKGROUND

The court in June 1999 denied supplementing this case with a case seeking equitable relief against the County Of Los Angeles settlement policy. See the district court order denying supplementation (Appendix B App 34 entered 1st July 1999). The related case was filed as a separate case on Oct 4th 1999 case No. CV-99 -10121 -JSL-(Mc) and after being dismissed in February 2000, was reversed and remanded on 4th February 2002, See *Bernhardt v. County Of Los Angeles et a*l, 279 F.3d 862 (9TH Circ 4th Feb. 2002)

TWO INCONGRUENT 9TH CIRCUIT DECISIONS REGARDING VEXATIOUS LITIGANT ORDER

This 9th Circuit published decision of 4th February 2002 is incongruent to its prior unpublished 9th Circuit decision of 25th June 2001 which affirmed the vexatious litigant order on this case. See (Appendix A Page App 4) where the 9th Circuit states "We affirm the orders raised in Appeal No 00-55930 including but not limited to the district court's vexatious litigant order entered on May 1st 2000 , See *De Long v Hennessey* 912, F. 2d 1144, 1146-48 (9th Circuit 1990)"

The incongruence is not immediately visible - as the 9th Circuit's 4th February 2002 published decision attacks the district court's justification for the vexatious litigant order unknowingly - through reversing and remanding related case CV-99-10121-JSL (Mc) which is a large part of the district court's justification for the vexatious litigant order.See the district court vexatious litigant order (Appendix B App 5.) Note: The district court's full justifications for the vexatious litigant order are set out in the Court's order entered May 1st 2000. (See Petition For Writ Of Certiorari Appendix B at Page App 5 and App 6)

As the 9th Circuit's most recent published decision reverses and remanded petitioner's related case, part of the district court's reason for the vexatious litigant order has evaporated - which creates a great probability that the other justifications that the district court found for the vexatious litigant order i.e. "failing to state a claim against multiple defendants", "frivolous" claims, arguments and conclusions were also made in error.

ARGUMENT 9

DUE PROCESS & EQUAL PROTECTION OF THE LAWS

Due Process requires notice and an opportunity to be heard, Powell, 851 F. 2d at 431. The standard for measuring the adequacy of these procedural protections increases in proportion to the significance of the interest at stake. *Morrissey v. Brewer*, 408 U.S. 471, 481, 33 L ed. 2d 484, 92 S. Ct. 2593 (1972) The petitioner was not given due process of law or equal protection of the laws on the vexatious litigant order. *De Long v Hennessey* 912 F. 2d 1144, 1146-48 (9th Circuit 1990). as there was no adequate notice from the district court's order 83 See order to show cause at (Appendix B - Page App. 9) as it does not disclose or describe the specific conduct that appears to violate subdivision FRCP 11 (b) pursuant to FRCP 11 c (1) (B) in Plain English, before the court entered the order, without a hearing on May 1st 2000. See the district court order that cancelled the hearing (Appendix B Civil Minutes - App 7).

ARGUMENT 15

The district court prejudiced petitioner's case(s) by denying petitioner's motion to supplement this case in June 1999 with a cause of action against the County Of Los Angeles settlement policy for equitable relief which would have attracted lawyers to this case, and as 9th Circuit ruled on 4th Feb 2002 in the separately filed related action - *Bernhardt v County Of Los Angeles* that the petitioner had standing to bring the case when she filed that lawsuit- then it follows that petitioner must have had standing to bring the case in June 1999 when she made a motion to supplement this case with it - as the injury had occured by Oct 6th 1998, and continued after it.

CONCLUSION

The 9th Circuit published decision to reverse related case *Bernhardt v County Of Los Angeles* et al 279 F.3d 862 (9th Circuit 4th Feb 2002) is at odds with its earlier unpublished decision of 25th June 2001, as the more recent decision reverses part of the district court's justification for entering the vexatious litigant order placed on this case - as the related case itself - was a reason for the vexatious litigant order, as was the earlier Motion To Supplement this case with it. The 4th Feb 2002 decision to reverse and remand the related case also shows it was a district court error to deny petitioner's Motion to Supplement her Complaint with a complaint asking for equitable relief against the County Of Los Angeles Settlement policy on July 1st 1999 as she had standing to bring the case and the denial has prejudiced both case(s). Also the earlier 9th Circuit 25th June 2001 unpublished decision to affirm 00-55596, and 00-55930 has made the mistake of not looking to the Full Faith And Credit act, 28 USCS § 1738 and this court's precedent in *Kremer v. Chemical Construction Corp* 456 U.S. 461; 102 S. Ct. 1883; 72 L. Ed. 2d 262; 1982, and gave a greater preclusive effect to a Small Claims default judgement than would the Court of the State from which the judgment emerged, and cited to no authority to justify their res judicata decision.

Angela Bernhardt

Angela Bernhardt Petitioner In Pro Per 3/28/2002